

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION**

MAXWELL KREMER,

Plaintiff,

v.

REDDIT, INC.

Defendant.

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No. 2:21-cv-00038

MEMORANDUM OPINION AND ORDER

Maxwell Kremer is the owner and only employee of Simcrimecom located in Cookeville, Tennessee. He registered its logo with the United States Copyright Office, and simcrime.com as a trademark/servicemark with the Tennessee Secretary of State. Reddit, Inc., headquartered in San Francisco, California, maintains the “Reddit.com” website where registered users submit assorted content including links, texts, comments, images, and videos.

In late July 2019, after Kremer had registered Simcrimecom, a photograph of Simcrimecom’s business location and its logo appeared on the Reddit website with related comments. Around a year later, Kremer learned of the picture and he sued Reddit for \$100 million in damages in the Putnam County Circuit Court after the San Francisco Police Department failed to pursue felony charges brought by him against Reddit.

The case was removed to this Court and a number of motions followed, most filed by Kremer. Now before the Court is Magistrate Judge Newbern’s 19-page Report and Recommendation (“R&R”) (Doc. 52) in which she recommends that Reddit’s Motion to Dismiss (Doc. No. 8) be granted and that all other motions be denied as moot.

Kremer has filed what he titles a “Response Specific Objection to Report and

Recommendation” (Doc. No. 54) in which he raises a number of objections. Notwithstanding the liberality afforded *pro se* filings, Haines v. Kerner, 404 U.S. 519, 520 (1972), the Court finds none of his objection meritorious and will therefore reject the same and adopt the R&R.

Most of Kremer’s objections involve the way in which Magistrate Judge Newbern analyzed his claims. In this regard, Kremer repeatedly asserts that the R&R focused on “statutory damage claims where the Plaintiff requested Punitive Damage Claims, not statutory[.]” (Doc. No. 54 at 1). Thus, according to Kremer, it was error for Magistrate Judge Newbern to discuss “direct or secondary copyright [because] Plaintiff selected **Punitive Damages, not statutory** damages[.]” (Id. at 2) (emphasis and bold in original). Compounding the error, according to Kremer, Magistrate Judge Newbern “[c]hose to disregard Plaintiff’s TN Sate trademark claims by using the Federal Lanham Act instead of the Tennessee Trademark Act,” and she “ch[ose] the Federal Lanham Act . . . so that the Plaintiff would not prevail.” (Id.). Had Judge Newbern analyzed this case under the Tennessee Trademark Act, Kremer continues, he would not have been required to conduct a “covert investigation” as to “how” his trademark appeared on Reddit, only that it did. (Id. at 3). In other words, Kremer would have prevailed under state law because the Tennessee Trademark Act does not require the answering of “hypothetical questions,” such as “[h]ow does a person wake up and eat breakfast[?], how does a person drive to work[?], [or] how does a person walk down the street[?]” (Id.).

There are a myriad of problems with these objections. For one, in the “Causes of Action” section of his Complaint, Plaintiff does not make clear whether he is bringing a federal or state trademark claim, although he cites 17 U.S.C. § 506, which provides federal criminal penalties for copyright infringement and was the basis for his complaint with the San Francisco Police

Department. Further, in his Motion for Summary Judgment, Kremer cites 17 U.S.C. § 501(b) for the proposition that he “is entitled to institute actions based on his own authorship.” (Doc. No. 39 at 4). Given this, it was hardly error for Magistrate Judge Newbern to look to the Lanham Act to address Kremer’s claims, particularly when state law itself provides that “the construction given the federal act should be examined as persuasive authority for interpreting and construing” the Tennessee Trademark Act. Tenn. Code Ann. § 47-25-518.

Regardless, Magistrate Judge Newbern acknowledged Kremer’s state law trademark claim and discussed it at length. (Doc. No. 52 at 15-18). Ultimately, however, she found that this claim failed because, just as under the Lanham Act, Kremer could not explain how *Reddit* used “simcrime.com” in commerce. This was not error because the statute itself says that the Tennessee Trademark Act is to be applied and construed “substantially consistent with the federal system of trademark registration and protection under the [Lanham Act] as amended.” Tenn. Code Ann. § 47-25-518.

Kremer’s suggestion that he can recover \$100 million dollars without alleging and ultimately proving how his copyright was unlawfully used by Redditt (as opposed to others) defies reality and ignores controlling law. He cannot simply assert that he will sell an exclusive license for \$1 million dollars to each of the “countries of the Berne Convention,” and extrapolate from that the conclusion he is entitled to \$100 million from Reddit for the alleged violation of his state trademark claim.

The Tennessee Trademark Act provides the following remedies:

(a) Any owner of a mark registered under this part may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as such court may deem just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered

by reason of such wrongful manufacture, use, display or sale. The court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed three (3) times such profits and damages and/or reasonable attorneys' fees of the prevailing party in such cases where the court finds the other party committed such wrongful acts with knowledge or in bad faith or otherwise as according to the circumstances of the case.

Tenn. Code Ann. § 47-25-514. The statute provides the possibility of trebles damages, but not the sort of punitive damages sought by Kremer. Likewise, “the Lanham Act expressly prohibits levying damages that may be classified as a ‘penalty’” and this includes punitive damages. La Quinta Corp. v. Heartland Properties LLC, 603 F.3d 327, 342 (6th Cir. 2010).

There being no basis for securing punitive damages under either the Lanham Act or the Tennessee Trademark Act aside, Kremer’s repeated assertion that he is bringing a punitive damages and not a statutory claim under the Trademark Act misapprehends state law. Under Tennessee law, “[t]here is no basis for a single, stand-alone punitive damages claim by itself,” Jones v. Windham, No. W201500973COAR10CV, 2016 WL 943722, at *9 (Tenn. Ct. App. Mar. 11, 2016), because “‘damages’ and ‘punitive damages’ are remedies . . . , not stand-alone causes of action” Jackson v. Falcon Transp. Co., No. 3:08-0771, 2011 WL 1627319, at *2 (M.D. Tenn. Apr. 29, 2011). In other words, “[a] claim for punitive damages . . . depends on actual damages being recoverable or ‘a basis for the recovery of compensatory damages.’” Durham v. Johnson & Johnson, Inc., No. 3:20 CV-554, 2021 WL 3745730, at *5 (E.D. Tenn. Aug. 24, 2021) (quoting Beal v. Walgreen Co., No. W2004-02925-COA-R3-CV, 2006 WL 59811, at *12 (Tenn. Ct. App. Jan. 12, 2006). His Complaint does not set forth a plausible claim for damages under the facts alleged (few though they may be) but, to survive a motion to dismiss, a complaint must include enough factual allegations “to

state a claim to relief that is plausible on its face.” Bell Atl.Corp. v. Twombly, 550 U.S. 544, 570 (2007).

Kremer also objects to Magistrate Judge Newbern’s statement that his arguments are “difficult to parse.” (Doc. No. 52 at 6). It is not Magistrate Newbern’s fault that Kremer’s filings have hardly been models of clarity, and this is certainly no reason to “defuse[] and refuse[]” the R&R. (Doc. No. 54 at 3).

Kremer’s complaint about typographical and scrivener’s errors are not proper objections. Just because Magistrate Newbern, after quoting Moses v. Youtube, Inc., No. 12-2822-JPM-DKV, 2013 WL 12095139 (W.D. Tenn. Sept. 23, 2013), concluded that “as in Moses, Kremer’s allegations do not plausibly allege facts from which the Court can find that YouTube infringed on his copyrighted work” (Doc. No. 52 at 13), in no way suggests that she thought Youtube was a defendant. Equally ridiculous is Kremer’s suggestion that some unnamed Delaware restaurant may have been “implicat[ed]” as a defendant when Magistrate Newbern wrote “clam” instead of claim, notwithstanding that (1) Reddit is a Delaware corporation; (2) Delaware “is widely known to cater seafood restaurants”; and (3) “waiters and waitresses [sic] are paid extra tips for selling boiled clam dishes” in that state. (Doc. No.. 54 at 3-4).

Incorporated in Kremer’s objections is a Motion to Disqualify Judge Newbern, primarily on the grounds that she falsely stated his filings were held to less stringent standards than those drafted by lawyers. Kremer posits this is demonstrably false because, had his Complaint been liberally construed, Magistrate Newbern would not have recommended dismissal, nor could she have done so because his Complaint does not reference “‘Federal Code 17Usc501(b)’ in the demand for relief.” (Doc. No. 54 at 5). He also moves for “Injunctive Relief,” claiming “Judge Newbern must be

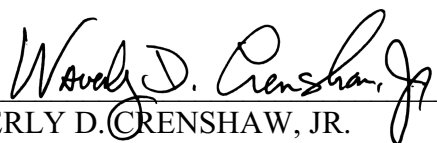
charged with felony Aggravated Perjury” under Tenn. Code Ann. § 39-16-703. This argument and request are so risible as to be worthy of no further comment.

Having considered the record *de novo* as required by Rule 72 of the Federal Rules of Civil Procedure, the Court agrees with Magistrate Judge Newbern that, even construing the factual allegations in his favor, Kremer’s complaint fails to state a claim upon which relief can be granted. Accordingly, the Court rules as follows:

- (1) The Report and Recommendation (Doc. No. 52) is **ACCEPTED** and **APPROVED**;
- (2) Kremer’s “Response Specific Objection to the Report and Recommendation” (Doc. No. 54) is **REJECTED** and its incorporated Motion to Dismiss and request for injunctive relief are **DENIED**;
- (3) Reddit’s Motion to Dismiss (Doc. No. 8) is **GRANTED**; and
- (4) Kremer’s Complaint (Doc. No. 1-2) is **DISMISSED WITH PREJUDICE**.

In accordance with Rule 58 of the Federal Rules of Civil Procedure, the Clerk of the Court shall enter a final judgment and close this case.

IT IS SO ORDERED.



WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE